

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 110

FOOD AND DRUG STANDARDS

Subchapter 3

Food Manufacturing Establishments

37.110.301 DEFINITIONS (1) "Adulterated food." A food shall be deemed "adulterated" if it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; if it bears or contains any added poisonous or deleterious substances for which no safe tolerance has been established by regulations, or in excess of such tolerance if one has been established; if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; if it has been processed, prepared, packed, or held under unsanitary conditions, whereby it may have been rendered injurious to health; if it is in whole or in part the product of a diseased animal, or an animal which has died other than by slaughter; if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or as otherwise determined under 50-31-202, MCA.

(2) "Approved" means acceptable to the health authority based on his determination as to conformance with appropriate standards and good public health practice.

(3) "Closed joints" means fitted together snugly leaving no openings large enough to permit the entrance of vermin.

(4) "Corrosion-resistant material" means a material which maintains its original surface characteristics under prolonged influence of the foods, cleaning compounds, and sanitizing solutions which may contact it.

(5) "Easily cleanable" means readily accessible and of such material and finish and so fabricated that residue may be completely removed by normal cleaning methods.

(6) "Employee" means any person working in a food processing establishment who transports food or food containers; who engages in food preparation, cutting,

wrapping, or service; or who comes in contact with any food utensils or equipment.

(7) "Equipment" means stoves, ranges, hoods, meatlocks, tables, counters, refrigerators, saws, cutting knives, mixers, grinders, tenderizers, sinks, utensils, washing machines, steam tables, and similar items used in food processing and storage.

(8) "Food," as used in this subchapter, means any raw, cooked, or processed edible substances, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(9) "Food contact surfaces" means those surfaces of equipment and utensils with which food or food products normally come into contact, and those surfaces with which food and food products may come in contact and drain, drip, or splash back onto surfaces normally in contact with food or food products.

(10) "Health authority" means the department of public health and human services, local health officer, local sanitarian, or other authorized representative.

(11) "Food processing establishment" means a commercial establishment in which food is processed or otherwise prepared and/or packaged for human consumption, including food manufacturing establishments, meat markets, bakeries, frozen food plants, commercial food processors, or perishable food dealers.

(12) "Misbranded" means the use of any written, printed, or graphic matter upon or accompanying food or containers of food which violates 50-31-203, MCA, the Montana Food, Drug and Cosmetic Act, or any other applicable local, state, and federal labeling requirements.

(13) "Perishable food" means any food of such type or in such condition as may spoil.

(14) "Person" means an individual, partnership, corporation, and association.

(15) "Potentially hazardous food" means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting infectious or toxigenic micro-organisms.

(16) "Safe temperatures," as applied to perishable and potentially hazardous foods, means temperatures of 45°F or below and 140°F or above.

(17) "Sanitize" means effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the health authority as being effective in destroying micro-organisms, including pathogens.

(18) "Sealed" means free of cracks or other openings which permit entry or passage of moisture.

(19) "Single-service articles" means cups, containers, lids or closures, plates, trays, knives, forks, spoons, stirrers, paddles, skewers, straws, toothpicks, napkins, doilies, packaging and wrapping materials, and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic or other readily destructible materials, and which are intended by the manufacturers and generally recognized by the public as for one usage only, then shall be discarded.

(20) "Wholesome" means in sound condition, clean, free from adulteration and otherwise suitable for use as human food. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.302 PRECONSTRUCTION REVIEW (1) Prior to the construction of any establishment or the remodeling or enlarging thereof, each person shall present to the department such plans and specifications for review and approval. Such plans drawn to scale shall include but shall not be limited to floor plan arrangement; floor, wall, and ceiling material; cooling and other equipment specifications; lighting; ventilation; plumbing; electrical facilities; sanitary facilities; and such other information as the department may request in order to ascertain conformity with the applicable requirements. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.303 PRELIMINARY INSPECTION (1) All food processing establishments shall comply with all of the following items of sanitation. Before any establishment shall commence serving the public, the owner, or manager thereof shall notify the department or local health officer, sanitarian, or sanitarian-in-training in order that a preliminary inspection may be made to determine whether or not the establishment complies with the following items of sanitation, and no establishment shall open unless there is on display an inspection report indicating satisfactory compliance with all such items. This provision shall also apply to existing establishments whenever the ownership,

location, operation, or management of such existing establishment is changed or interrupted. (History: Sec. 50-50-103, 50-50-301 and 50-50-302, MCA; IMP, Sec. 50-50-103, 50-50-301 and 50-50-302, MCA; NEW, Eff. 11/4/73; AMD, 1994 MAR p. 2941, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 04 through 09 reserved

37.110.310 FOOD SUPPLIES (1) All food in food processing establishments shall be from sources approved or considered satisfactory by the federal, state, and local inspection enforcement agencies and shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption. Food from such sources shall have been protected from contamination and spoilage during subsequent handling, packaging and storage and while in transit.

(2) All hermetically sealed food and food products shall have been processed in food processing establishments. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.311 MILK AND MILK PRODUCTS (1) All milk and milk products, including fluid milk, other fluid dairy products and manufactured milk products, shall meet the standards of quality established for such products by the department of livestock. Only grade A pasteurized fluid milk and fluid milk products may be used or offered for sale. Dry milk and milk products may be reconstituted in the establishment if used for cooking purposes only. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73, AMD, 1984 MAR p. 26, Eff. 1/13/84; TRANS; from DHES, 2001 MAR p. 2423.)

37.110.312 FROZEN DESSERTS (1) All frozen desserts such as ice cream, soft frozen desserts, ice milk, sherbets, ices, and mixes shall meet the standards of quality established for such products by the department of

livestock. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 13 through 17 reserved

37.110.318 SHELLFISH (1) All oysters, clams, and mussels shall have been from sources approved by the health authority; provided, if the source is outside the state, it shall be one which is certified by the applicable state or federal inspection agencies.

(2) Shell stock shall be identified with an official tag giving the name and certificate number of the original shell stock shipper and the kind and quantity of shell stock.

(3) Free and frozen shucked oysters, clams, and mussels shall be packed in non-returnable containers identified with the name and address of the packer, repacker, or distributor and the certificate number of the packer or repacker preceded by the abbreviated name of the state. Shucked shellfish shall be kept in the original container until sold or processed. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.319 MEAT AND MEAT PRODUCTS (1) All meat and meat products shall have been inspected for wholesomeness under a state and federal regulatory program; provided, the health authority may accept other sources which are in its opinion in compliance with applicable federal, state, and local laws and regulations. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.320 POULTRY AND POULTRY PRODUCTS (1) All poultry and poultry meat products shall have been inspected for wholesomeness under an official regulatory program; provided, the health authority may accept other sources which are in its opinion satisfactory and which are in compliance with applicable federal, state, and local laws and regulations. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.321 BAKERY PRODUCTS (1) All bakery products shall have been prepared in a food processing establishment; provided, the health authority may accept other sources which are in its opinion satisfactory and which are in compliance with applicable federal, state and local laws and regulations.

(2) All cream-filled and custard-filled pastries shall have been prepared and handled in accordance with the food protection requirements of this subchapter. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rule 22 reserved

37.110.323 EGGS AND EGG PRODUCTS (1) All eggs and egg products shall have been from approved sources and be in compliance with applicable federal, state and local laws and regulations.

(2) "Checked eggs," "hatchery rejects," or other eggs and egg products of lesser quality shall not be used in manufacturing foods or food products. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 24 through 29 reserved

37.110.330 FOOD PROTECTION (1) All food, while being stored, prepared, displayed, or sold in food processing establishments, or transported between such establishments, shall be protected against contamination from dust, flies, rodents, and other vermin; unclean utensils and work surfaces; unnecessary handling, coughs, and sneezes; flooding, drainage, and overhead leakage; and any other source.

(2) Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitization purposes may be used or stored in food manufacturing establishments. Poisonous and toxic materials shall be identified, and shall be stored and used only in such manner and under such conditions as will not contaminate food or constitute a hazard to employees or customers.

(3) All wild game shall be separated from commercial meat in the cooling facilities. All hides and wild game trimmings shall be stored separate from commercial meat in

such a manner as to preclude contamination, or breeding of flies or vermin. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.331 TEMPERATURE REQUIREMENTS (1) Conveniently located refrigeration facilities and display facilities and effective insulated facilities shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, display, or transportation. Each cold-storage facility used for the storage of perishable food in a non-frozen state shall be provided with an indicating thermometer accurate to " 2°F, located in the warmest part of the facility in which food is stored, and of such type and so situated that the thermometer can be easily and readily observed for reading.

(2) All perishable food shall be stored at such temperatures as will protect against spoilage. All potentially hazardous food shall, except when being prepared, be kept at 45°F or below, or 140°F or above, and, when placed on display for service, shall be kept hot or cold as follows: (a) If stored hot, the temperature of such food shall be kept at 140°F or above.

(b) If stored cold, such food shall be stored in or on a refrigerated facility which must reduce or maintain the product temperature at 45°F or below.

(c) Chill room (room for aging meat) temperature shall be 35°F within 2°F plus or minus with a tolerance of 10°F after fresh food is put in for chilling.

(d) Sharp freeze rooms and sharp freeze compartments temperatures shall be -10°F or lower, or temperatures of 0°F for either type of installation after fresh food is put in for freezing.

(e) Locker room temperatures shall be 0°F with a tolerance with 12°F plus.

(f) Frozen food shall be kept at such a temperature so as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of 45°F or below, or under cool, potable running water 70°F or below.

(g) Cooking and smoking shall be conducted so that all portions of the meat or other foods will be held without interruption for at least 10 minutes at 165°F or higher. Following preparation, smoked and cooked meats, etc. must be held at the temperature range of 140°F or higher or 45°F or lower unless processing permits other temperature storage.

(History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.332 FOOD PREPARATION (1) Convenient and suitable utensils, such as forks, knives, tongs, spoons, or scoops shall be provided and used to minimize handling of food at all points where food is prepared.

(2) Meat salads, poultry salads, potato salad, egg salad, cream-filled pastries, and other potentially hazardous prepared food shall be prepared, preferably from chilled products, with a minimum of manual contact, and on surfaces and with utensils which are clean and which, prior to use, have been sanitized.

(3) Custards, cream fillings, or similar products which are prepared by hot or cold processes, and which are used as puddings or pastry fillings, shall be kept at safe temperatures, except during necessary periods of preparation and service, and shall meet the following requirements as applicable:

(a) Pastry fillings shall be placed in shells, crusts, or other baked goods either while hot (not less than 140°F) or immediately following preparation, if a cold process is used; or

(b) Such fillings and puddings shall be refrigerated at 45°F or below in shallow pans, immediately after cooking or preparation, and held thereat until combined into pastries or served.

(c) All completed custard-filled and cream-filled pastries shall be refrigerated at 45°F or below promptly after preparation, and held thereat pending service.

(History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.333 FOOD STORAGE (1) Containers of food shall be stored at least 5 inches above the floor, on clean racks, dollies, or other clean surfaces, in such a manner as to be protected from splash and other contamination.

(2) Food not subject to cooking before serving and subject to contamination shall be stored at a safe temperature and in such a manner as to be protected against contamination from food requiring washing or cooking.

(3) Wet storage of packaged food shall be prohibited.

(4) Special lights above meat displays or special wrapping which make the products appear of better quality than they actually are shall not be used. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73;

TRANS, from DHES, 2001 MAR p. 2423.)

Rules 34 through 39 reserved

37.110.340 DISPLAY AND SERVICE (1) Where unwrapped food or food products are placed on display, such displays will be protected against contamination from customers and other sources. The protection shall be effective, easily cleanable, i.e., counter-protector devices, cabinets, display cases, containers or other similar type of protective equipment.

(2) Tongs, forks, spoons, toothpicks, spatulas, scoops, and other suitable utensils shall be provided and shall be used by food demonstration workers to reduce manual contact with food to a minimum. For self-service by customers, similar implements shall be provided.

(3) Spoons, knives, forks, other utensils, etc. shall be stored and used in such a manner as to preclude their contamination and mishandling. Display cases, counters, shelves, and similar areas shall be kept clean. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.341 TRANSPORTATION (1) The requirements for storage, display, and general protection against contamination as contained in this subchapter, shall apply in the transporting of all food from a food processing establishment to another location for service, catering operations, or delivery; and all potentially hazardous food shall be kept at 45°F or below or 140°F or above, during transportation.

(2) During the transportation of food from a food processing establishment, all food shall be covered in containers or completely wrapped or packaged so as to be protected from contamination. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS,

from DHES, 2001 MAR p. 2423.)

37.110.342 TOXIC MATERIALS (1) Only those poisonous and toxic materials required to maintain the establishment in a sanitary condition, and for sanitization of equipment and utensils, shall be present in the establishment. No toxic products shall be stored where contamination of food or ingredients can occur. All containers of poisonous and toxic materials shall be prominently and distinctively marked or labeled for easy identification as to contents, hazardous use and an antidote.

(2) When not in use, poisonous and toxic materials shall be stored in cabinets which are used for no other purpose, or in a place which is outside the food storage, food preparation, and cleaned equipment and utensil storage rooms. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All toxic materials should be stored on lower shelves that prevent spillage and leakage onto shelves below.

(3) Bactericides, cleaning compounds, or other compounds intended for use on food contact surfaces shall not be used in such a manner as to leave a toxic residue on such surfaces nor to constitute a hazard to employees or customers.

(4) Poisonous polishing materials shall not be used on equipment or utensils, nor shall it be stored in the food preparation or storage areas of the establishment.

(5) Poisonous compounds, such as insecticides and rodenticides, if present, shall have a distinctive color so as not to be mistaken for food and shall be stored in containers in which the product is legibly identified.

(6) Poisonous materials shall not be used in any way as to possibly contaminate food, equipment, or utensils, nor to constitute other hazards to employees or customers.

(History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 43 through 46 reserved

37.110.347 EMPLOYEE REQUIREMENTS (1) No person while affected with a disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, or an acute respiratory infection, shall work in a food service establishment in an area and capacity in which there is a likelihood of transmission of disease to patrons or to fellow employees, either through direct contact or through the contamination of food or food contact surfaces with pathogenic organisms. The manager or person in charge of the establishment shall notify the health authority when any employee of a food processing establishment is known or suspected of having a disease in a communicable form.

(2) All employees shall thoroughly wash their hands and arms with a liquid soap and warm water before starting work, and shall wash hands during work hours as often as may be required to remove soil and contamination, as well as after visiting the toilet room. This is especially important before handling cooked foods likely to be consumed without further heating or cooking. The hands of all employees shall be kept clean while engaged in handling food and food contact surfaces. Employees shall keep their fingernails clean and neatly trimmed. Germicidal or bacteriostatic soaps are strongly recommended for routine hand washing.

(3) The outer garments of all persons, including utensil and equipment washers, engaged in handling food or food contact surfaces, shall be clean. Hair nets, caps, or other effective hair restraints shall be used by employees engaged in the preparation of food to keep hair from falling into food and food contact surfaces. Hair sprays are not acceptable in lieu of one or the other of the above hair restraints.

(4) Employees shall not use tobacco in any form while engaged in food preparation or service, or while in equipment and utensil washing or food preparation areas; provided that designated locations in such areas may be approved by the health authority for smoking, where no contamination hazards will result.

(5) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices

during all working periods. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.348 EQUIPMENT AND UTENSILS: COMPOSITION, PLACEMENT, CLEANING, SANITIZING AND STORAGE

(1) All equipment and utensils shall be so durable under normal conditions and operations as to be resistant to denting, buckling, pitting, chipping, crazing, excessive wear; and shall be capable of withstanding repeated scrubbing, scoring, and the corrosive action of cleaning and sanitizing agents and food with which they come in contact.

(2) Food and food product contact surfaces of equipment and utensils shall be smooth, free of breaks, open seams, cracks, chips, pits, holes, and similar imperfections. They shall be in good repair and shall be easily cleanable.

(3) Materials used as food contact surfaces of equipment and utensils shall, under use conditions, be corrosive resistant, relatively non-absorbent and non-toxic, except the corrosion resistant requirements shall not preclude the use of cast iron as a food contact material.

(4) Food contact surfaces of equipment and utensils shall be free of difficult to clean internal corners and crevices. Threads which routinely contact food shall be of sanitary design and no V-type threads shall be used in such a situation.

(5) Replacement food contact utensils and equipment shall comply with the applicable provisions of the Federal Meat Inspection Act, or be "nSf" tested.

(6) Lubricated bearings and gears of equipment shall be so constructed that lubricants cannot get into the food or onto food contact surfaces.

(7) All food contact equipment and utensils, unless designed for in-place cleaning, shall be accessible for manual cleaning and for inspection either without being disassembled or by disassembling without the use of tools, or by easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open end wrench.

(8) Equipment intended for in-place cleaning shall be so designed and constructed that cleaning and sanitizing solutions can be circulated throughout a fixed system and will contact all interior surfaces. The system must be self-draining or otherwise completely evacuated.

(9) Surfaces of equipment not intended for contact with food and food products, but which are exposed to splash, food debris, or otherwise require frequent cleaning, shall be reasonably smooth, washable, free of unnecessary ledges, projections or crevices, readily accessible for cleaning, and of such material and in such repair as to be readily maintained in a clean and sanitary condition.

(10) Cutting blocks and boards, work benches, and bakers tables shall be constructed of non-toxic material, smooth and free of cracks, crevices and open seams. Cutting boards shall be easily removable for cleaning. Replacement cutting surfaces shall conform to standards of applicable federal, state and local laws and regulations.

(11) Solder shall be of such formulation as to be non-toxic under use conditions, shall be corrosion resistant, and shall, consistent with good industrial practice in the refining of its constituent elements, be free of cadmium, antimony and other toxic materials.

(12) Single service articles shall be made from non-toxic materials and used only once.

(13) Equipment which is placed on tables or counters, unless readily movable, shall be sealed thereto or mounted on legs or feet at least 4 inches high and shall be so installed as to facilitate the cleaning of the equipment and areas adjacent thereto.

(14) Floor mounted equipment, unless readily movable, shall be sealed to the floor or shall be installed on raised platforms of concrete or other smooth masonry in such a manner as to prevent liquids or debris from seeping or settling underneath, between or behind such equipment in spaces which are not fully open for cleaning and inspection, or such equipment shall be elevated at least 6 inches above the floor. The space between adjoining units and between a unit and the adjacent wall shall be closed and sealed or sufficient space of at least 18 inches shall be provided to facilitate any cleaning between, behind and beside all such equipment.

(15) Aisles or working spaces between equipment shall be of sufficient width to permit employees to perform their duties without contamination of food or food contact surfaces by clothing or through personal contact.

(16) Utensils shall be thoroughly cleaned at least

once daily. After contact with raw food, food contact surfaces of equipment and utensils, exclusive of cooking surfaces, used in the preparation, serving and display or storage of food shall be thoroughly cleaned to sight and touch prior to contact with cooked food or food products likely to be consumed without further cooking or heating to safe temperatures. The cooking surfaces of grills and similar cooking devices shall be cleaned at least once a day and shall be free of grease deposits and other soil.

(17) All food contact surfaces and utensils shall be thoroughly cleaned and sanitized after use on wild game or just prior to use on commercial meat.

(18) Non-food contact surfaces of all equipment used in the operation of a food plant including tables, counters, shelves, hoods, fans and refrigerators, etc. shall be cleaned at such frequency as is necessary to be free of accumulations of dust, dirt, food particles and other debris.

(19) Detergents and abrasives shall be rinsed off meat contact surfaces.

(20) Cloths used for wiping shall be clean and any such cloths used for wiping food contact surfaces shall be used for no other purpose. Wipe cloths shall be stored or rinsed in an approved sanitizing solution prior to each use.

(21) All food contact surfaces of equipment used in the preparation, display or storage of potentially hazardous food shall be sanitized prior to such use and following any interruption of operations during which contamination of the food contact surfaces is likely to have occurred. Where equipment utensils are used for the preparation of potentially hazardous food on a continuous or production-like basis, the food contact surfaces of such equipment and utensils shall be cleaned and sanitized at intervals throughout the day on a schedule approved by the health authority.

(22) Prior to washing, all equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

(23) Effective concentrations of a suitable detergent shall be used in both manual and mechanical dishwashing.

(24) When manual washing is employed, equipment and utensils shall be thoroughly washed in a detergent solution which is kept clean, and shall then be rinsed free of such solution. All food contact surfaces of all other equipment and utensils shall be sanitized by either exposure for at

least one-half minute to clean, hot water at a temperature of at least 170°F, or exposure for a period of at least one minute to a sanitizing solution containing:

(a) At least 50 ppm of available chlorine at a temperature not less than 75°F,

(b) At least 12.5 ppm of available iodine in a solution having a pH not higher than 5.0 and a temperature of not less than 75°F or a higher temperature than recommended by the manufacturer, or

(c) Any other chemical sanitizing agent which has been demonstrated to the satisfaction of the health authority to be effective and non-toxic under use conditions, and for which a suitable field test is available. Such sanitizing agents, in use solutions, shall provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of not less than 75°F.

(25) Equipment too large to treat by methods set forth in (24) above may be treated with live steam from a hose, in the case of equipment in which steam can be confined, or by rinsing with boiling water, or by spraying or swabbing with a chemical sanitizing solution of at least twice the minimum strength required for the particular sanitizing solution when used for immersion sanitizing.

(26) At least a 3-compartment sink shall be provided and used for manually washing food utensils and equipment in food establishments which are remodeled or start in business after the adoption of this rule.

(27) Sinks used for manual washing and sanitizing operations shall be of adequate length, width and depth to permit the complete immersion of the largest equipment and utensils (except large vats, etc.) and each compartment of such sinks shall be supplied with hot and cold running water. Baskets if used shall be of such design as to permit complete immersion of the utensils and equipment components being sanitized therein. These sinks shall not be used for hand washing or janitorial purposes.

(28) When hot water is used as the sanitizing agent in a manual operation, thermometers, accurate to " 2°F, shall be provided convenient to the sink to permit frequent checks of the water temperature.

(29) Drainboards, of adequate size for proper handling of soiled utensils prior to washing and for cleaned utensils following rinsing or sanitization, shall be provided and shall be so located or constructed as not to interfere with the proper use of the equipment washing facilities; provided that drain boards shall not be required for cooks' and bakers' rinse sinks.

(30) Sinks, dish tables, drain boards, hooks and shelves shall be constructed of galvanized metal or better,

suitably reinforced, of such thickness and design as to resist denting and buckling, and shall be installed so as to allow drainage of the stored equipment and/or utensils.

(31) When washers are used, the requirements set forth in subchapter 2 of this chapter shall apply.

(32) When an immersion type equipment washing machine is employed for equipment and utensil washing and sanitizing, the applicable requirements pertaining to manual dishwashing shall be met, provided that a 2-compartment system shall be deemed adequate when the temperature of wash water is maintained at or above 140°F and hot water at a temperature of at least 170°F is used as the sanitizing agent.

(33) Any other type of machine, device, or facilities and procedures may be approved by the health authority for cleaning or sanitizing equipment and utensils, if it can be readily established that such machine, device, or facilities and procedures will routinely render equipment and utensils clean to sight and touch, and provide effective bactericidal treatment as demonstrated by an average plate count per utensil surface examined of not more than 100 colonies.

(34) Food contact surfaces of cleaned and sanitized equipment and utensils shall be handled in such a manner so as to be protected from contamination. Cleaned equipment and utensils shall be handled so that fingers and thumbs do not contact inside surfaces.

(35) Cleaned and sanitized portable equipment and utensils shall be stored above the floor in a clean, dry location and suitable space and facilities shall be provided for such storage so that food contact surfaces are protected from splash, dust and other contamination. Utensils shall be air dried before being stored, or shall be stored in a self-draining position on suitably located hooks or racks constructed of corrosion resistant material. Wherever practicable, stored containers and utensils shall be covered or inverted.

(36) Single service articles shall be stored in closed cartons or containers which protect them from contamination.

(37) Such articles shall be stored, handled and dispensed in such a manner as to prevent contamination of surfaces which may come into contact with food and food products.

(38) Single service articles shall be used only once and discarded. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rule 49 reserved

37.110.350 WATER SUPPLY (1) The water supply shall be adequate, of a safe, sanitary quality, and from an approved public or private water supply system which is constructed, protected, operated and maintained in conformance with applicable state and local laws, ordinances and requirements; provided that, if approved by the health authority, a non-potable water supply system may be permitted within the establishment for purposes such as air conditioning, compressor cooling and fire protection, and the non-potable water pipes must be labeled as such or color coded.

(2) Hot and cold running water, under pressure, shall be provided in all areas where food is prepared, and where equipment and utensils are washed.

(3) All water not piped into the establishment directly from the source shall be transported, handled, stored and dispensed in a sanitary manner. Such water shall be given supplementary treatment under order of the health authority.

(4) Drinking water, if not dispensed through the water supply system of the food establishment, may be stored in a separate non-pressurized tank, reservoir or other container. Stored water shall be given supplementary treatment when approved by the health authority.

(5) Ice shall be made from water meeting the requirements of (1) of this rule, in an ice-making machine which is located, installed, operated and maintained so as to prevent contamination of the ice, or shall be obtained from a source approved by the health authority.

(6) Ice shall be handled, transported, and stored in such a manner as to be protected against contamination. If block ice is used, the outer surfaces shall be thoroughly rinsed so as to remove any soil before it is used for any purpose.

(7) If ice crushers are used, they shall be maintained in a clean condition and shall be covered when not in use.

(8) If ice is used, approved containers and utensils shall be provided for storing and serving it in a sanitary manner. Ice buckets, other containers and scoops, unless they are of the single service type, shall be of a smooth, impervious material, and designed to facilitate cleaning. They shall be kept clean, and shall be stored and handled in a sanitary manner. Only sanitary containers shall be used for the transportation or storage of any ice used in the food processing establishment. Canvas containers shall not

be used unless provided with a sanitary, single service liner so as to completely protect the ice. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.351 SEWAGE DISPOSAL (1) All water-carried sewage shall be disposed of by means of a public sewerage system or an approved sewerage disposal system which is constructed and operated in conformance with applicable state and local laws, ordinances and regulations.

(2) Non water-carried sewage disposal facilities shall not be used except where water-carried disposal methods have been determined by the health authority to be impractical or impossible. Under such conditions, only facilities which have been approved by the health authority shall be used and operation of these facilities shall be in conformance with applicable state and local laws, ordinances and regulations. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.352 PLUMBING (1) All plumbing shall be sized, installed, and maintained in accordance with the Montana State Plumbing Code. No establishment shall have both a potable and non-potable water supply except by specific permission of the department. The potable water system shall be installed in such a manner so as to preclude the possibility of back siphonage. Grease traps shall not be required except in special cases as may be determined by the health authority.

(2) Refrigerators, cooking kettles, and similar types of enclosed equipment in which food, portable equipment, or utensils are placed shall not be directly connected to the drainage system. Each waste pipe from such equipment shall discharge into an open, accessible, individual waste sink, floor drain, or other suitable fixture which is properly trapped and vented. Indirect connections of drain lines from other equipment used in the preparation of food or washing of equipment and utensils may be required by the health authority when, in their opinion, the installation is such that backflow of sewage is likely to occur. Each walk-in refrigerator shall be equipped with a floor drain, so

installed as to preclude the backflow of sewage into the refrigerator, or all parts of the floor of each walk-in refrigerator shall be graded to drain to the outside through a wastepipe, doorway, or other opening.

(3) Indirect waste connections shall be provided for drains, overflows, or relief vents from the water supply system.

(4) Drain lines from equipment shall not discharge waste water in such a manner as will permit the flooding of floors or the flowing of water across working or walking areas or into difficult to clean areas, or otherwise create a nuisance. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.353 TOILET AND LAVATORY FACILITIES (1) Toilet facilities shall be adequate and conveniently located and shall be accessible to the employees at all times. Where women and men are employed, toilets for each sex are required. Where the use of non-water-carried sewage disposal facilities has been approved by the health authority, such facilities shall be separated from the establishment. Toilet facilities provided for patrons shall meet the requirements of this rule.

(2) Toilet facilities shall be installed in accordance with applicable state and local laws, ordinances and regulations.

(3) Water closets and urinals shall be of a sanitary design.

(4) Toilet rooms shall be completely enclosed, and shall have tight-fitting, self-closing doors. Such doors shall not be left open except during cleaning or maintenance. If vestibules are provided, they shall be kept in a clean condition and in good repair.

(5) Toilet facilities including the toilet room and fixtures shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials and such

receptacles in toilet rooms for women shall be covered. Such receptacles shall be emptied at least once a day and more frequently when necessary to prevent excessive accumulation of waste material.

(6) Lavatories shall be located within or immediately adjacent to all toilet rooms or vestibules. In all new establishments and establishments which are extensively altered, lavatories shall also be located within the area where food is prepared.

(7) Lavatories shall be adequate in size and number and shall be so located as to permit convenient and expeditious use by all employees.

(8) Lavatories shall be installed in accordance with applicable state and local laws, ordinances and regulations, or in the absence thereof, as approved by the health authority.

(9) Each lavatory shall be provided with hot and cold or tempered running water and soap. Where hot and cold running water is provided, a mixing valve or combination faucet is recommended and shall be required in new or extensively remodeled installations. Steam mixing valves are prohibited.

(10) An adequate supply of liquid hand cleaning soap or detergent shall be available at each lavatory. An adequate supply of sanitary towels or an approved hand drying device shall be available and conveniently located near the lavatory. Common towels are prohibited. Where disposable towels are used, easily cleanable waste receptacles shall be located conveniently near the handwashing facilities. Roller towels are not recommended.

(11) Lavatories, soap dispensers, hand drying devices and all other components of the handwashing facilities shall be kept clean and in good repair.

(12) Washing hands at facilities other than those specifically designated for this purpose shall be prohibited. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.354 WASTE DISPOSAL (1) All garbage and rubbish containing food waste shall be kept in containers constructed of durable metal or other approved types of materials which do not leak and do not absorb liquids. All containers shall be provided with tight-fitting lids or covers or shall be kept in a special vermin proofed room or enclosure, except bone, fat and meat trim may be kept in clean covered boxes under refrigeration until pickup, provided that it is removed at least twice weekly and does not cause obnoxious odors or interfere with the market

operation.

(2) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a manner so as not to contaminate equipment, utensils or food preparation areas. Brushes shall be provided for washing garbage containers and shall be used for no other purpose. Can washing machines, steam cleaning devices, or similar equipment shall be used where the operation is large enough to warrant this type of equipment. Waste waters from such cleaning operations shall be disposed of as sewage. Plastic garbage can liners are highly recommended.

(3) There will be a sufficient number of containers to hold all of the garbage and rubbish containing food waste which accumulates between periods of removal from the premises.

(4) Garbage and rubbish containing food waste shall be stored so as to be inaccessible to vermin. All other rubbish shall be stored in a manner approved by the health authority.

(5) Storage facilities shall be adequate for the proper storage of all garbage and rubbish. Storage areas shall be clean and shall not constitute a nuisance.

(6) Storage rooms or enclosures shall be constructed of easily cleanable, washable materials and shall be vermin proofed. The floors and the walls up to at least the level reached by splash or spray shall be of relatively non-absorbent materials. Garbage containers outside the establishment shall be stored either on a hard, smooth surface or on a rack which is at least 12 inches above the ground for a single bank of containers, or 18 inches above the ground for a multiple bank of containers.

(7) Food waste grinders shall be so constructed and installed as to comply with applicable state and local plumbing laws, ordinances, and regulations.

(8) All unrefrigerated garbage and rubbish shall be disposed of daily or at such other frequencies as may be approved by the health authority, and in such manner as to prevent a nuisance.

(9) Where material other than garbage is burned on the premises, an approved incinerator as required under ARM 17.8.316 shall be provided and shall be operated in such a manner as to comply with local regulations and so that it does not create a nuisance. Garbage shall not be burned. Areas around such incinerators shall be kept in a clean and orderly condition. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.355 VERMIN CONTROL (1) Effective and safe control measures shall be utilized to minimize the presence of rodents, flies, roaches and other vermin on the premises. The premises shall be kept in such condition as to prevent the harborage or feeding of vermin. All openings to the outer air shall be effectively protected against the entrance of insects by self-closing doors, closed windows, screening, controlled air currents, or other effective means.

(2) Screening material shall be not less than 16-mesh to the inch or equivalent.

(3) Screen doors to the outer air shall be self-closing and screens for windows, doors, skylights, transoms and other openings to the outer air shall be tight fitting and free of breaks.

(4) All openings to the outside shall be effectively protected against the entrance of rodents. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 56 through 59 reserved

37.110.360 FLOORS, WALLS AND CEILINGS (1) All floors shall be kept clean and in good repair. The floors of all food preparation, food storage, utensil washing rooms and areas, walk-in refrigerators, dressing or locker rooms, and toilet rooms shall be constructed of smooth, durable, non-absorbent, and easily cleanable materials such as concrete, terrazzo, ceramic tile, grease resistant grades of linoleum or plastic, or tight wood impregnated with plastic, provided that in areas subject to spilling or dripping of grease, blood, or fatty substances, such floor coverings shall be of grease, blood, and fat resistant materials, and provided

further that floors of non-refrigerated, dry food storage areas need not be non-absorbent.

(2) Floor drains shall be provided in floors which are water flushed for cleaning or which receive discharges of water or other fluid waste from equipment. Such floors shall be graded to drain.

(3) Carpeting may be used on the floors of customer areas. Such carpeting shall be in good repair and kept clean, and must also be fire resistant.

(4) The walking and driving surfaces of all exterior areas where foods are sold shall be kept clean and free of debris, and shall be properly drained so that water will not accumulate. Such areas shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust.

(5) Mats of duckboards, if used, shall be easily cleanable and be kept clean. They shall be of such design and size as to permit easy removal for cleaning.

(6) All floors hereafter installed in food preparation, storage, utensil washing rooms, walk-in refrigerators, dressing or locker rooms and toilet rooms shall provide a coved base juncture between the floor and wall with the cove extending up the wall at least 3 inches. In all cases, the juncture between the floor and wall shall be closed.

(7) All walls, ceilings, doors, windows, skylights and similar closures shall be kept clean and in good repair. The walls of all food preparation, storage, utensil washing and handwashing rooms or areas shall have light colored, smooth, easily cleanable surfaces, and such surfaces shall be washable up to at least the highest level reached by splash or spray.

(8) Wall covering materials used such as sheet metal, linoleum, plastic, paper and similar materials shall be so attached and sealed to the wall or ceiling as to leave no open spaces or cracks which would permit accumulation of soil or debris or provide harborage for vermin.

(9) Studs, joists and rafters shall not be left exposed in food preparation, storage, utensil washing areas or toilet rooms except as may be necessary for the installation of overhead tracks, rails and hoists. If left exposed, they shall be suitably furnished and shall be kept clean and in good repair.

(10) Light fixtures, decorative material and similar equipment and material attached to walls or ceilings shall be kept clean. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.361 LIGHTING AND VENTILATION (1) All rooms in which food is prepared, stored or served, where utensils are washed, locker rooms, toilet rooms and garbage and rubbish storage areas shall be well lighted and well ventilated.

(2) At least 20 food-candles of light shall be required on all working surfaces and in all working areas. Sources of artificial light shall be provided and used to the extent necessary to provide the required amounts of light in these areas when in use and when being cleaned.

(3) All food preparation areas must be equipped with a filtered, easily cleanable ventilation system. Ventilation systems shall comply with applicable state and local fire prevention requirements and shall, when vented to the outside air, discharge in such a manner as not to create a nuisance.

(4) Ventilation facilities shall be maintained and operated so that all areas are kept reasonably free from excessive heat, steam, condensation vapors, smoke or fumes. Effective air recovery systems may be used in the ventilation of these areas. All rooms, areas and equipment from which contaminated aerosols, obnoxious odors or noxious fumes or vapors may originate shall be effectively vented to the outside air.

(5) Ventilation hoods, fans and other devices shall be designed to prevent grease or condensate from dripping onto food or food preparation surfaces or non-food contact areas. Filters shall be readily removable for cleaning and replacement and shall be kept clean.

(6) Where intake air ducts are used they shall be designed and maintained so as to prevent the entrance of dust, birds, dirt, insects or other contaminating materials. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.362 DRESSING ROOMS AND LOCKERS (1) Adequate facilities shall be provided for the orderly storage of employees' clothing and personal belongings. Dressing rooms or designated areas shall be provided when, as a routine procedure, employees change clothing within the establishment. Such designated areas shall be located outside of food preparation, storage and serving areas, and utensil washing and storage areas; provided that the health authority may approve such an area in a storage room where only completely packaged food is stored.

(2) Adequate lockers within the dressing rooms or areas or other suitable facilities within dressing rooms shall be provided and used for the storage of employees' coats, clothing and personal belongings.

(3) Dressing rooms or areas and lockers shall be kept in a clean condition. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.363 CLEANING OF PREMISES (1) The food processing establishment and all parts of the property used

in connection with operation of the establishment shall be kept neat, clean and free of litter and rubbish. None of the operations connected with the food processing establishment shall be conducted in any room used as living or sleeping quarters.

(2) Vacuum cleaning, wet cleaning or other dustless methods of floor and wall cleaning shall be used or dust arresting sweeping compounds and pushbrooms shall be employed. All such cleaning, except emergency floor cleaning, shall be done during those periods when the least amount of food is exposed.

(3) A utility sink shall be provided for house cleaning purposes. This sink shall not be used for food, utensil or hand washing.

(4) Laundered wiping cloths and similar cloth material used for cleaning shall be stored in a clean place and separate from other soiled materials. Aprons, uniforms and similar clothing shall be stored in a clean place and separate from similar soiled clothing. Non-absorbent containers or laundry bags shall be provided for storage of damp or soiled articles until removed for laundering. Such material shall be stored so as not to contaminate food, food products, utensils, equipment or clean laundry. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.364 LIVE ANIMALS AND BIRDS: PROHIBITED ON PREMISES (1) No live birds or animals shall be allowed in any area used for the storage, preparation of food or food products, or for the cleaning or storage of utensils, or in toilet rooms, employees' dressing rooms or areas, in vehicles used for transporting food or in any other area or facility in the food processing establishment, provided that guide dogs accompanying blind persons may be permitted in food sales areas. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 65 through 69 reserved

37.110.370 INSPECTIONS (1) Food processing establishments, local health boards, local health officers, and sanitarians and sanitarians-in-training working for local health boards must comply with the inspection requirements of ARM 37.110.239, with the understanding that references to "food service establishment" in that rule will

be read to be "food processing establishment".

(2) The department hereby adopts and incorporates by reference ARM 37.110.239, which specifies inspection requirements for food service establishments. Copies of the above referenced rule are available from the Department of Public Health and Human Services, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951 [phone: (406) 444-2676]. (History: Sec. 50-50-103 and 50-50-305, MCA; IMP, Sec. 50-50-301, 50-50-302 and 50-50-305, MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.371 MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES

(1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in food retail and/or food processing inspection techniques. The department is responsible for making training and standardization review available on a periodic basis.

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) Whenever a preliminary inspection is required by ARM 37.110.303, the food processing establishment is inspected for compliance with this subchapter within 10 days after receiving notice from the department that such a preliminary inspection is needed.

(ii) Each food processing establishment is inspected at least twice every 12 months, or on the schedule specified in a signed agreement with the department.

(iii) All the requirements of ARM 37.110.370 are met.

(iv) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(v) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years

and copies of the documentation are submitted or otherwise made available to the department upon request.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) and (b) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department. (History: Sec. 50-50-305, MCA; IMP, Sec. 50-50-305, MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)